

CHIEF CLERKS OFFICE

2007 JUL 16 PM 2:02

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TROPICAL GARDEN'S SUBDIVISION DICKINSON, TX

July 16, 2007

LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, TX 78711-3087

Re: MARLIN ATLANTIS WHITE, LTD
TCEQ DOCKET NO. 2006-1572-MWD

Dear Ms. Castanuela:

Enclosed for filing are the Affected Persons requesting a contested case hearing and affected person status in the above referenced matter. To avoid any possible conflict with information given by TCEQ lawyers and the Chief Clerk's office's dictate for same day notification we are faxing the replies/requests to the Chief Clerk and the principals on page one of the amended mailing list. Therefore, the replies to the responses will meet the criteria of same day notification in the event there is miscommunication between the offices at TCEQ. All other packets to requestors will be mailed or hand delivered on July 16, 2007, thereby, meeting the same day notification requirement. As previously directed, the original and eleven copies will arrive in your office today by USPS overnight delivery. If you have questions I can be reached at 832-425-4344.

Sincerely,


Peggy Wright, Spokesperson

Tropical Garden's Affected Persons for a Contested Case Hearing

MAILING LIST
MARLIN ATLANTIS WHITE, LTD.
DOCKET NO. 2006-1572-MWD; PERMIT NO. WQ0014570001

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FOR ALTERNATIVE DISPUTE
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TCEQ Docket No. 2006-157 MWD; In re: Application by Marlin, Atlantis White, Ltd.
For Permit No. WQ0014570001

Reply to the response of the Applicant, Marlin Atlantis White.

Procedural History Since October Filing

*The Applicant trivializes concerns of "upstream" landowners above the discharge point.

*The "upstream" landowners notice failed to notify a significant number of residents that are affected persons. Specifically, the Green Isles subdivision have properties and common areas used by the residents that border Gum Bayou and would be affected by high water events. No additional requests for hearing or reconsideration were filed because the affected homeowners were not notified. The ½ mile zone dictated by the Executive Director's office encompasses many homes in the 92 home subdivision.

"Tropical Garden's" Group is not an Affected Person

*The affected persons of the Tropical Garden's Group are residents of Tropical Garden's subdivision, are so designated in the one mile radius map dictated by the Executive Director, all are in approximately 3,000 feet or less of the proposed wastewater treatment plant and all suffer possible health problems when Gum and Dickinson Bayous overflow their banks and inundate the properties of the affected residents. Abundant wildlife will also be compromised.

*Ray and Sherry Jones live within 3,000 feet of the proposed plant and have high water during heavy rains and flooding. Add effluent and possible leakage from the proposed plant in flooding situations and their health and well being are compromised. The affected persons are being treated in a disparaging manner by the Applicant.

*The Tropical Garden's Group has been charged with failing to meet the requirements of law for "affected person" status. We are a small group that has mounted a valiant protest to developer with lawyers and resources that want to quash our rights as citizens that stand in the way of their development. Photos sent with last October 2006 replies show that when Gum Bayou and Dickinson Bayou converge during a high water event that all properties in the area are "affected." Add to the mix that the waters are tidally influenced and you have a serious problem with respect to the health and well being of all residents in the one mile radius. The affected residents live 3000 feet or less from the point of discharge with several of the group adjacent to Gum Bayou.

Posting Issue

The documents came after the September 2006 deadline and shortly before the Nov. 15, 2006 hearing. Citizens of Tropical Gardens simply stated that the information, that by law is suppose to be on public display, was not available and that caused the group difficulty in determining what criteria was used to deem a person as an "affected person." With the peculiarities of this particular section of the Gum and Dickinson Bayous and the photos we provided for the Nov. 15, 2006 hearing, affected persons do not necessarily have to live on property adjacent to Gum Bayou to be considered an "affected person" or landowner.

Regionalization Issues

The "Tropical Garden's" Group did express concerns about accepting wastewater from Marlin Atlantis. The proposed development is in Texas City and WCID #1 would have born the future costs of accepting the development's wastewater. It is our opinion that at a later date the WCID #1 and the citizens of Dickinson would have to bear the expense of local plant upgrades/enlargements to handle the increased load. Since the tax base for this development lies in the jurisdiction of Texas City some Tropical Garden's citizens expressed concerns. Ultimately the WCID #1 Board, on the recommendation of General Mgr. Paulisson, refused the service to Marlin Atlantis White.

It is the Tropical Garden's "group's" understanding that the San Leon actively solicits being a regional plant, they have the potential storage capacity and are willing to undertake the expansion.

The larger question is, why does Texas City not provide water and sewer for the expansion of the northern quadrant of their city? Why dump on a bayou system already in peril?

Conclusion

The "affected persons" of Tropical Gardens request that the Commission refer this matter to a contested case hearing, and that the duration be no greater than six months.

Respectfully submitted,



Peggy Wright
Tropical Garden's spokesperson
4216 Scenic Drive
Dickinson, TX 77539
832-425-4344

TCEQ PERMIT/PROPOSED PERMIT NO. WQ0014570001
APPLICATION BY MARLIN ATLANTIS WHITE, LTD.

REPLY TO EXECUTIVE DIRECTOR'S SUPPLEMENTAL RESPONSE TO HEARING
REQUEST AND REQUEST FOR RECONSIDERATION

*Notice mailed on February 2, 2007 by Executive Director (ED) used ½ mile radius upstream of proposed discharge site as the criteria for notification. The notification included two developers and four individual landowners. ED failed to notify many landowners in the Green Isles subdivision who have property near the bayou and whose residents use the common grounds that are adjacent to Gum Bayou. On July 9, 2007, I spoke via phone with Robert Carpenter, an affected person and President of the Green Isles Property Owner's Association. Marlin Atlantis and/or the ED failed to notify residents/affected persons of the proposed waste water treatment plant (WWTP) on Gum Bayou even though they fall in the ½ mile radius. Therefore, no timely comments, hearing requests or requests for reconsideration could be filed.

*Let it be noted that TCEQ failed to notify downstream affected persons requesting reconsideration of the ED's decision or people requesting a contested case hearing that the Nov. 15th Commissioner's hearing had directed the Applicant to notify upstream landowners of the proposed discharge. There was no written outcome of the Nov. 15th meeting in Austin and many affected persons waited for notification of the results of the meeting and the charge to the developer, Marlin Atlantis White to inform the public.

*TCEQ is negligent in keeping the downstream affected persons or interested parties apprised of the actions taken on November 15, 2007 in Austin, TX.

A. *Betty Gutierrez has been signified as an affected person but many legitimate affected persons have been ignored by the ED.

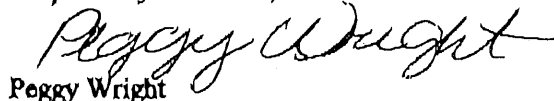
- 1) Louis Starz lives on Gum Bayou, has written letters, has requested reconsideration and has been dismissed as an affected person. Also, Chat Magee, Steve Reckner and others. WHY? What list is the ED using to make his decisions?
- 2) Fifty-one requests for reconsideration have been filed--all within 3000 feet of the plant location as defined by the ED's map. They have all been dismissed and essentially derided for their "form letter." These affected people thought a unified front would be respected. Obviously not!
- 3) The majority of affected persons still support, Peggy Wright, (affected spokesperson for the beleaguered residents of Tropical Gardens.) I was selected in a meeting at the Dickinson Police station meeting room by many of our residents who wanted to mount a united front against a seemingly insurmountable force, TCEQ and the developer Marlin, Atlantis White. Witness to my selection to this position was Navella Cole, Case Specialist, for U.S. Representative Ron Paul. Also, note that State Representative Larry Taylor's office acknowledges Peggy Wright as spokesperson for our subdivision.

B. Requestor's of Tropical Gardens ask the Commission to recognize them as affected persons and refer the following issues to the State Office of Administrative Hearings on the following issues:

- 1) Requestor's of Tropical Gardens (TG) concur that data supplied by the Applicant and used by the Director is suspect.
- 2) Requestor's of TG understand that the impaired regions has problems with dissolved oxygen. We request that a current TMDL study be done with respect to the dissolved oxygen in our section of the bayou not near the Hwy. 3 impaired region.
- 3) Requestor's of TG believe information provided in the application caused the Executive Director to perform an improper evaluation.
- 4) Gum Bayou is tidally effected at the point of discharge. Simply open Google Earth, type in Gum Bayou, Dickinson, TX 77539 and you can observe the effects of the tide.
- 5) Requestor's of TG have been in meetings where the San Leon MUD representatives repeatedly said they would work with the developer to receive Marlin, Atlantis, White's developments wastewater.
- 6) Requestor's of TG think the water body will be adversely affected for recreational sports. Bacterial infections by people coming in contact with the bayou waters are on the rise (Alison Rouse, Dudley Long and Peggy Wright have been treated for skin infections by a Dr. after contact with bayou waters.)
- 7) The Requestor's of TG believe that treated effluent (freshwater) will negatively impact the water body. The area has large variety of flounder, trout and various species of saltwater fish. Because of the diversity of fish, shrimp and crab we have many species of birds (heron (great, white and blue)), ibis, pelicans (white and brown) spoonbills, etc.
- 8) Discharge limits essentially allow a 1400 home residential development to dump on approx. 90 homes down stream and and 70 homes upstream. Recently news of yet another subdivision (approx. 400 homes) is requesting to use the Gum WWTP plant (Grason Communities).

C. Grant the Requests for Reconsideration.

Respectfully submitted,



Peggy Wright
Tropical Garden's Spokesperson
4216 Scenic Drive
Dickinson, TX 77539
832-425-4344

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ DOCKET NO: 2006-1572-MWD

2007 JUL 16 PM 2:04

IN THE MATTER OF THE APPLICATION BY MARLIN ATLANTIS WHITE, LTD. FOR
THE PROPOSED TPDES PERMIT NO. WQ001457001 BEFORE THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY. CHIEF CLERKS OFFICE

REPLY TO THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO REQUESTS
FOR HEARING AND REQUESTS FOR RECONSIDERATION

I. INTRODUCTION

- A. The residents of Tropical Gardens believe that Marlin Atlantis White, Ltd. submitted faulty information to the Executive Director.
- B. The February 2, 2007 notice by the applicant failed to notify the upstream landowners in the Green Isles subdivision. Mr. Robert Carpenter, President of the Homeowner's Association) was surprised to hear of the waste water treatment plan (WWTP) that could affect his subdivision.

II. REQUIREMENTS OF APPLICABLE LAW

A. Requests for Contested Case Hearing

Under 30 TAC 55.203(a) and 30 TAC 55.209 (e) an affected person is one who has personal justifiable interests related to a legal right, duty, privilege, power or economic interest affected by the application. The answers below are expressed as opinions of many affected persons living in Tropical Garden's subdivision.

1. The law protects our health and well being.
2. We are within the distance restriction mandated by law on our affected interests as defined by the Executive Director in his map.
3. The residents of Tropical Gardens believe that a reasonable relationship exists between the interests claimed and the activity regulated.
4. The WWTP will impact the health, safety, and use of property of the residents of Tropical Gardens.
5. The natural resources will be impacted by the regulated activity on our ability to be in the water near our home and consume seafood in the area.
6. Not sure what this means: for governmental entities, their statutory authority over or interest in the issues relevant to the application.
7. We expect six (6) months duration for the contested case hearing.

III. DISCUSSION

A. Determination of Affected Person Status

1. Group Hearing Request

Residents attempted to provide a group hearing request and were shut down because of procedural red tape. New information has been submitted and hopefully we will fulfill the ridiculous requirements imposed on submitting information by individuals.

2. Mayors Winick and Masters

We support Mayor Master's request to a hearing on behalf of the city and city Council.

3. Chat Magee

Lives on a property adjacent to Gum Bayou. If we had access to the affected landowners list we could rectify the misinformation on file in the ED's office.

4. Rena Hardage

We agree she is not an affected person. She was speaking in our defense as the City Secretary concerned about the legal rights of her constituents.

5. Sherry and Ray Jones

The Jones' live within approximately 3000' of the proposed plant. They experience high water events that impact their health and well being.

6. Peggy Wright

The Wright's are within approximate 3000' of the proposed plant. Ms. Wright contracted a skin infection while taking photos for the fall TCEQ reply.

Betty Gutierrez, Louis Starz, Steve Reckner and others have Ms. Wright to support them in their efforts to establish their rights as affected persons. All are landowners adjacent to Gum Bayou.

7. Bert Schroeder

We support Bert Schroeder as an affected person entitled to a contested case hearing.

B. Issues Raised in the Hearing Requests

1. Issues Disputed

We concur that all of the issues remain disputed.

2. Issues of Fact

We agree that the following issues should be referred to the State Office of Administrative Hearings (SOAH)

*Whether modeling was conducted properly is a question of fact

*Whether the permit is protective of aquatic and human health

*Whether the WWTP is consistent with TCEQ's regionalization rules

3. Issues Raised During the Comment Period

We concur that questions regarding modeling, protection of human health and aquatic life, regionalization, additional studies and emergency measures were all raised in a timely manner during the comment period.

4. Relevant and Material Issues

Modeling, regionalization and protection of aquatic life and human health are relevant issues.

5. Issues Recommended for Referral to Hearing

*See item 4 above

C. Maximum Expected Duration of Hearing

Affected Persons of Tropical Gardens concur that the hearing be at least 6-9 months from the first date of the preliminary hearing until the proposal for decision is issued.

IV. REQUEST FOR RECONSIDERATION

Residents will once again, during this period, attempt to meet the ridiculous rules necessary to request reconsideration by the Executive Director. The TCEQ is the agency charged with protecting water quality and yet our residents truly feel they are the adversary in the process for safe waters..

V. CONCLUSION

We concur with OPIC recommending hearing requests to Betty Gutierrez and Bert Schroeder and referring this matter to SOAH with above referenced issues. We concur that Mayor Masters should have a chance to present material to be considered by the Commission. We strongly disagree with OPIC denying the requests for reconsideration of the Executive Director's decision.

Respectfully submitted,



Peggy Wright
Tropical Garden's Spokesperson
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832-425-4344